

Remarks/Arguments:

Claims 1-14 remain in this application. Claims 1 and 9 have been amended. Claims 15-21 have been added.

The Examiner has rejected claims 1-3, 9 and 10 under 35 U.S.C. 102(e) as being anticipated by Schneider (U.S. Pat. No. 6,880,678). Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131.

Applicant submits that Schneider '678 does not teach or suggest all of the limitations recited in amended independent claim 1, particularly in the arrangement required by the amended claim. Amended independent claim 1 recites an elevator car, comprising, *inter alia*, a top surface having an opening circumscribed by a surrounding edge and a refuge area structure having a first panel foldably connected to the surrounding edge and a second panel foldably and lockably connected to the first panel, the structure having a closed position in which the first and second panels are oriented coplanar with the opening in the top surface and fill the opening. Schneider '678 does not teach or suggest all of such limitations, among others, particularly in the arrangement required by amended claim 1. Accordingly, Schneider '678 does not anticipate amended claim 1 in accordance with MPEP 2131. Applicant therefore respectfully submits that amended claim 1 is in condition for allowance.

Amended independent claim 9 recites an elevator car, comprising, *inter alia*, a top surface, the top surface having an opening circumscribed by a surrounding edge, the surrounding edge having a left side and a right side, and a refuge area structure, the structure having a first hinge, a second hinge, a first panel, a second panel, and means for locking the second panel in a substantially horizontal position. Schneider '678 does not teach or suggest all of such limitations, among others, particularly in the arrangement required by claim 1. Accordingly, Schneider '678 does not anticipate amended claim 9 in accordance with MPEP 2131. Applicant therefore respectfully submits that claim 9 is in condition for allowance.

The original independent claims 2, 3 and 10 include limitations of the claims from which they depend, not taught or suggested in the art of record, thus having independent bases for novelty and non-obviousness.

The Examiner has rejected claims 4-8 and 11-14 under 35 U.S.C. 103(a) as being unpatentable over Schneider (U.S. Pat. No. 6,880,678). Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness of a claim, the prior art reference or combination of references must teach or suggest all of the limitations of the claim. A *prima facie* case of obviousness also requires that there be some teaching, suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP 2143.01. *Actual evidence* of a suggestion, teaching or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Conclusory statements, standing alone, are not evidence. *Id.* Motivation to combine or modify will be lacking if the art teaches away from a claimed combination. MPEP 2145. For at least the reasons set forth below, Applicant respectfully submits that the combined art of record does not render present claims 4-8 and 11-14 obvious.

As noted above, the art of record does not teach or suggest all of the limitations recited in amended independent claims 1 and 9 in accordance with MPEP 2143.03. Applicant therefore submits that the art of record does not teach or suggest all of the limitations of dependent claims 4-8 and 11-14 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the art of record does not render the pending independent claims or claims depending from them obvious in accordance with MPEP 2143, and respectfully submits that these claims are in condition for allowance.

Even if the cited reference taught or suggested all of the limitations recited in the amended claims, the Examiner has not established the motivation to modify the teachings of the reference as required by MPEP 2143. MPEP 2143.01 states that “[t]he mere fact that references *can* be combined or modified does not render the

resultant combination obvious unless the prior art also suggests the desirability of the combination.” (Emphasis in original.) Actual evidence of a suggestion, teaching or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Conclusory *statements* regarding the teaching of references, standing alone, are not evidence. *Id.* Rather than being based in evidence in the record, the motivation provided by the Examiner appears to be based on subjective opinion. This is not a sufficient basis for an obviousness rejection under the requirements of MPEP 2143.01. *See In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). The Examiner has not provided the requisite evidence in the prior art suggesting the desirability of the combinations claimed herein. Because evidence of the motivation required by MPEP 2143.01 is absent, Applicant respectfully submits that these claims are in condition for allowance.

Applicant further notes that the dependent claims include limitations in addition to those in the independent claims, not taught or suggested in the art of record, thus forming independent bases for novelty and non-obviousness.

While distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, the amendments herein are not intended to be an admission or concession as to the merits of the prior rejections. Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.


Conclusion:

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 651-6121 or via e-mail at ksprecher@fbtlaw.com.

Respectfully submitted,

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I hereby certify that a courtesy copy of this correspondence is being sent by facsimile to 571-273-5929 and the original is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 10th day of October 2006.


Beth Mauser